Supreme Court, U.S.
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No. 03-

IN THE

Supreme Court of the United States

ONYX ACCEPTANCE CORPORATION,

Petitioner,

v.

GERALD P. LAMPLEY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Congress granted an employee the right to sue an employer for compensatory and punitive damages when the employee has suffered an adverse employment decision in retaliation for making contact with the Equal Employment Opportunity Commission ("EEOC") to raise issues concerning the employer's employment practices. This Court, in *Kolstad v. American Dental Association*, 527 U.S. 526, 119 S. Ct. 2118, 144 L. Ed. 2d 494 (1999), addressed the imposition of punitive damages against corporate employers when corporate agents engage in violations of the Civil Rights Act that do not reflect corporate policy. In that case, this Court held that, when they adopt and implement anti-discriminatory policies, employers can receive protection against vicarious liability for punitive damages.

In the present case, an employer has been found liable for punitive damages arising out of the retaliatory discharge of an employee who had gone to the EEOC to complain about perceived racial discrimination at work. The employer had an anti-discrimination policy prohibiting discrimination of any kind, and the individual responsible for the decision to terminate the plaintiff was a branch manager who advised the corporate headquarters of his intent to terminate the plaintiff before the plaintiff first went to the EEOC. Corporate headquarters was not notified, prior to the termination, that the employee had visited the EEOC to complain about perceived discrimination.

The employee's description of the damages suffered as a result of the retaliatory discharge was perfunctory. The employee secured job offers for new positions with other employers, at higher compensation, barely two months after

termination, and, aside from testimony from the employee and his wife that the employee felt "devastated" as a result of his termination, there was no other evidence to identify psychological or emotional injuries resulting from the termination. Nevertheless, the jury found compensatory damages of $75,000 and imposed punitive damages against the employer of $270,000. The combination of the compensatory and punitive damages awarded exceeded the statutory cap on damages, and the district court reduced the total award to the statutory maximum without identifying whether or to what extent the reduction was to be applied to the compensatory or to the punitive damage aspect of the jury's verdict.

This petition presents two questions: whether punitive damages can be assessed against the employer on the basis of the decision of managerial agents acting contrary to the employer's anti-discrimination policies promulgated and implemented in good faith and whether damages here, assessed at the maximum amount permitted by law, were excessive.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Onyx Acceptance Corporation ("Onyx") is a Delaware corporation with its principal place of business in Foothill Ranch, California. No publicly held company owns 10 percent or more of Onyx's stock.

Prior to trial, respondent dismissed his claims against the only other defendant sued, Mr. Michael Strater. Mr. Strater was not a party at trial or to the appeal.

Respondent Gerald P. Lampley, plaintiff-appellee below, is an individual formerly employed by Onyx.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeal for the Seventh Circuit in this case.

OPINIONS BELOW

The district court's opinion (per Hibbler, D.J.) denying in part and granting in part petitioner's post-trial motions (Appendix ("Pet. App.") 15a-20a) is not published. The court of appeals' opinion (Pet. App. 1a-14a) affirming the judgment entered on the jury's verdict, as modified by the district court, is published at 340 F.3d 478 (7th Cir. 2003). The court of appeals' order denying rehearing and rehearing en banc (Pet. App. 23a) is not otherwise published.

STATEMENT OF JURISDICTION

The court of appeals entered its Opinion and Order August 18, 2003 and denied rehearing and rehearing en banc September 19, 2003. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The provisions of the Civil Rights Act of 1991, 42 U.S.C. § 1981a, relevant to this petition are reprinted in the Appendix at 25a-26a.

STATEMENT OF THE CASE

This Petition asks this Court to review a significant verdict entered in an employment case. A jury awarded the employee the equivalent of nearly six and one-half years' salary in compensatory and punitive damages for retaliatory discharge. The employee was able to secure a better-paying job in slightly more than two months; the only evidence of emotional injury was the testimony of the employee and his wife that the employee had been "devastated" by the termination (without seeking any treatment for the claimed emotional injury for nearly two years); and, notwithstanding the employer's promulgation and implementation of a comprehensive anti-discrimination policy prohibiting discrimination of any kind, the jury awarded punitive damages in favor of the employee and against the employer in the amount of $275,000. Even after reduction by the district court to the statutory maximum damages, the judgment represented more than five and one-half years' salary for the former employee.

Respondent Lampley sued his former employer, petitioner Onyx, claiming discrimination in the terms and conditions of employment on the basis of race and retaliatory discharge in response to Lampley's filing a complaint of race discrimination with the EEOC. Lampley invoked the district court's subject matter jurisdiction pursuant to 28 U.S.C. § 1343(a)(3) and (4). Onyx denied both claims, the case was tried before a jury, and the jury returned verdicts in respondent's favor on both claims.

On Lampley's claim of employment discrimination, the jury returned a $1,000 verdict, and, on Lampley's claim of retaliatory discharge, the jury awarded $75,000 in

compensatory damages and $270,000 in punitive damages. Onyx filed post-trial motions seeking judgment notwithstanding the verdict and, alternatively, a new trial or remittitur, and the district court denied those motions except inasmuch as the district court reduced the combined value of the damages on Lampley's claim of retaliatory discharge from $345,000 to $300,000 pursuant to the statutory cap set forth in 42 U.S.C. § 1981a(b)(3). Onyx appealed the $300,000 judgment on the retaliatory discharge claim, both as to Onyx's vicarious liability for punitive damages and as to the magnitude of compensatory and punitive damages, and the Seventh Circuit Court of Appeals affirmed.

Onyx is engaged in the business of indirect automobile finance. At the time of trial, Onyx maintained 20 branch offices, including a Chicago branch office in Rosemont, Illinois. Onyx's manager for the Chicago branch office at the time of Lampley's termination was Mr. Michael Strater.

Ms. Rosie Hokanson, Onyx's human resources director since 1994, testified that Onyx has an employment policy that "prohibits harassment, discrimination of any type." Employees who believed they had witnessed or experienced discrimination or harassment of any kind were encouraged to contact Onyx's human resources department, its executive staff or its legal department. Onyx also provided training for new employees at Onyx's corporate offices in California. Onyx's training session lasted approximately eight days, and, as part of the training session, all executives introduced themselves to the new employees. As part of the training session, Ms. Hokanson provided a presentation on the Human Resources Department and instructed the new employees what to do in the event they experienced a personnel problem.

Ms. Michelle Bland also testified in Onyx's case. In early 1998, when respondent Lampley was hired by Onyx, Ms. Bland was the Chicago branch manager, and Strater was her assistant manager. Ms. Bland also described Onyx's training classes for new hires in Onyx's California offices, and she confirmed that the training materials provided to new hires included an employee handbook identifying Onyx's procedures concerning racial harassment, sexual harassment and the like and identifying the internal complaint procedures followed by Onyx, including telephone numbers of contacts in the Human Resources Department. Ms. Bland testified that Onyx maintains "an open door policy in our company. Anybody, you can go to any management in our company all the way up to the top. That's the way we are trained as managers, that the door is open to everyone."

Lampley also acknowledged that Onyx's branch offices had always posted signs indicating that EEOC was the organization to contact in the event of discrimination. Lampley conceded, however, that, when he perceived himself the victim of discrimination at Onyx, he did not pursue the internal remedies provided by the corporation but, instead, contacted the EEOC directly.

Strater admitted that he knew that he could not fire an employee for an illegal reason. According to Strater, the decision to terminate Lampley was reached November 22, 1999 by Strater, his assistant manager and a third employee of the Chicago branch office. When the three determined on that date to terminate Lampley, they called Ms. Hokanson. Two days later, on November 24, 1999, respondent concluded that he had been the victim of racial discrimination at work, and he decided to go to the EEOC. (The jury ultimately found that Lampley had been denied equal treatment at work on

the basis of his race and awarded damages of $1,000 on that claim, but that verdict was not challenged on appeal and is not part of the present petition.)

On November 26, 1999, Lampley visited the EEOC, and, on Monday, November 29, 1999, Lampley went to Onyx's offices for a 7:00 a.m. meeting with Strater. According to Lampley, Strater referenced Lampley's visit to the EEOC as a basis for requesting Lampley's resignation, and, when Lampley refused to resign, Strater fired him.

In the ensuing two months, Lampley sent out employment applications to banks and other lenders, as well as to an automobile dealership. He received offers from both a lender and an automobile dealership and decided, 67 days after termination, to accept a better-paying position than he had held at Onyx with the dealership. (His last year's compensation at Onyx had been $53,337.57, while the job offer he received from the dealership was for $65,500.)

Lampley presented evidence of the impact of his termination on his emotional state. Lampley described himself as feeling "devastated" upon being fired. He testified that, while he had been more confident before his termination, he was "a little different person now" in that he "just look[s] at things a little differently now." When asked to describe his feelings, he stated that he thinks he is still "a happy person" but was "definitely changed" as a result of his termination.

Respondent's wife also testified. Ms. Lampley stated that, after respondent's termination, "he has not been the same since that time," and she testified that she had only ever seen him cry on the day of his termination. Further, she contrasted

respondent's emotional role in the family as moving from respondent having been the "optimist" before his termination to becoming "more needy" and "more dependent" on his wife after termination. She testified that, as of the time of trial, respondent had not yet stopped feeling needy.

Ms. Lampley further claimed that respondent's termination affected her ability to spend time away from work to raise a child. According to Ms. Lampley, she had planned to take off five years from work to raise a child; however, as a claimed result of Lampley's termination, Ms. Lampley could not financially afford to remain off work for five years, so she returned to work approximately nine months after having her child. (Respondent, however, admitted that he had secured employment with the automobile dealership, at a higher compensation than he had been earning at Onyx, three months before the birth of his first child.)

Ms. Lampley was asked to describe the medical care, psychiatric and/or psychological care respondent received since being fired in November 1999 and acknowledged that the couple did not begin to receive any counseling until 2001, when they received counseling through their church. Lampley acknowledged that he did not seek or receive psychiatric or psychological care for his emotional state. Lampley offered no additional evidence of any damages resulting from his termination.

REASONS FOR GRANTING THE PETITION

A. The Court of Appeals' Decision Undercuts This Court's Protection to Employers Against Vicarious Punitive Damages in Employment Cases

Kolstad v. American Dental Association, 527 U.S. 526, 119 S. Ct. 2118, 144 L. Ed. 2d 494 (1999), establishes a three-part analysis for determining the propriety of punitive damages: first, the plaintiff must establish that the employer acted with the requisite mental state (knowledge that its actions may have violated federal law), 527 U.S. at 535; second, the plaintiff must then establish a basis for imputing the discriminating employees' conduct to the employer, 527 U.S. at 539; third, the employer may still avoid punitive damages through a showing of a good faith effort to comply with the requirements of federal law, 527 U.S. at 545. As to the first two elements of the *Kolstad* analysis, Onyx acknowledges that, measured against the stringent standard of review applicable to this issue, the jury's determination of punitive damages in this case is beyond challenge: Strater, the employee who terminated Lampley, acknowledged an awareness of federal anti-discrimination law, and, if the jury chose to believe Lampley's description of the November 29, 1999 meeting at which he was fired, it could also have concluded that Strater did not tell the truth when he denied that the subject of the EEOC was discussed at that time; similarly, Strater acknowledged that he had the authority to terminate Lampley, and, under principles of agency, his conduct would be attributable to Onyx.

Rather, this petition concerns the third element of the *Kolstad* analysis. As this Court recognized, the public purpose advanced by the Civil Rights Act is advanced when employers

like Onyx are encouraged to develop anti-discrimination policies and educate their employees as to the prohibitions imposed by law, 527 U.S. at 545, and, in this case, Onyx implemented a comprehensive anti-discrimination policy and trained its employees regarding that policy. Strater, who ultimately fired Lampley, acknowledged that he understood that he could not fire an employee for an illegal reason.

In *Kolstad*, this Court recognized the conflict between the incentives emanating from "scope of employment" rules of the Restatement (Second) of Agency and the policy objectives of the Civil Rights Act and held that, "in the punitive damages context, an employer may not be vicariously liable for the discriminatory employment decisions of managerial agents where these decisions are contrary to the employer's 'good-faith efforts to comply with Title VII.'" (527 U.S. at 545, *quoting, Kolstad v. American Dental Association*, 139 F.3d 958, 974 (C.A.D.C. 1998), Tatel, J., dissenting). A corporation, like Onyx, that adopts and attempts in good faith to implement anti-discriminatory practices and to comply with the requirements of the law should not suffer the imposition of punitive damages when a branch manager, knowing that he cannot fire an employee for an illegal reason, acts contrary to corporate policy and discharges an employee in retaliation for voicing complaints to the EEOC.

The evidence of Onyx's anti-discrimination policy was uncontroverted: Onyx maintained an anti-discrimination policy prohibiting discrimination and harassment of any kind, published that policy in its employee handbooks, trained new hires regarding the anti-discrimination policy and instructed employees that Onyx maintained an "open door" policy pursuant to which employees could bring their concerns of

discriminatory practices to responsible corporate representatives. Lampley himself voiced concerns to Ms. Bland, his former supervisor, that he had been the target of remarks that he perceived to be racially offensive, and she advised him, pursuant to Onyx's policy, to bring his concerns to his supervisors and, if necessary, to the Human Resources Department.

Lampley did not deny Onyx's promulgation or good-faith implementation of an anti-discriminatory policy. Instead, Lampley criticized Onyx's failure to introduce the written policy into evidence, notwithstanding the testimony of Ms. Hokanson and Ms. Bland, and suggested that Onyx's evidence only related to the existence of an anti-discrimination policy, not to the existence of an explicit policy that prohibits retaliatory discharges in response to complaints of discriminatory practices. The anti-discrimination policy was described unambiguously at trial: the policy prohibits "discrimination or harassment of any kind," and Onyx's evidence on this point was never challenged. The protection against retaliatory discharge is part and parcel of an employer's responsibility to refrain from discriminatory employment practices, not a separate and distinct employment practice, as the EEOC is the federal agency established by law to address and protect against discriminatory employment practices and the agency to which employees like Lampley were invited to go if they believed they needed to act on concerns about discriminatory practices. In any event, there was never any evidence presented at trial to suggest that Onyx had a separate and distinct employment practice or policy which permitted retaliatory discharge while prohibiting discriminatory employment practices, and the trial evidence included Strater's acknowledgment, on questions from Lampley's counsel, that he could not fire an employee for an illegal reason.

The evidence concerning corporate management's awareness of the decision to terminate Lampley reveals that Onyx's corporate management had no idea that Lampley's visit to the EEOC had anything at all to do with Lampley's termination. The evidence was unrebutted that Lampley's superiors determined to fire Lampley for lack of job performance and advised Ms. Hokanson a week prior to Lampley's termination that Lampley was to be terminated. In fact, Lampley himself testified that it was not until November 24 that he even concluded, for himself, that he had been a victim of race discrimination, and it was not until Thanksgiving Day (November 25) that he made the decision to visit the EEOC. That decision was three days after Ms. Hokanson had already been advised by Strater and others at the Chicago branch office that they had decided to terminate Lampley.

Lampley's last effort to identify a basis on which Onyx could be subjected to punitive damages was to criticize Onyx's response to Lampley's complaints to the EEOC, as that response contained inaccurate information regarding Lampley's job performance. Lampley relied heavily on the trial exhibits relating to Onyx's response to the EEOC, but those exhibits reveal that the source of information for Onyx's responses to the EEOC was Strater, and they confirm that Ms. Hokanson, while formulating the corporate response to Lampley's EEOC complaint, was relying upon information from the Chicago branch office in the belief that the information was truthful and accurate. (On December 6, 1999, for example, Strater sent an email to Ms. Hokanson containing statistics regarding Lampley's performance. On the following day, Ms. Hokanson directed an email to Strater and others requesting further information as to two factual issues as to which data had not been provided and

advised that she had prepared a spreadsheet of the performance goals for Lampley as well as a draft response to the EEOC. As to the spreadsheet, Ms. Hokanson requested Strater and others to provide further information, and, for the draft response to the EEOC, Ms. Hokanson requested that the recipients "review the letter and make certain I have covered the points accurately." On the following day, Strater sent a confirmatory email to Ms. Hokanson.)

Onyx, acting in good faith, looked to its branch manager for responsive information, and there is no evidence in this Record to suggest that Onyx's corporate management knew, believed or suspected that the information being supplied by Strater to corporate management was inaccurate in any respect. The only evidence of incorrect information provided by Ms. Hokanson to the EEOC, other than statistical evidence provided to Ms. Hokanson by the branch office employees, concerned an ambiguous reference to pre-termination warnings supplied to Lampley about his job performance. In a January 17, 2000 statement, Ms. Hokanson asserted to the EEOC that Lampley "was given a formal written warning *via telephone* on November 24, 1999 by his immediate supervisor, Kurt Wheeler, regarding his performance issues." (Emphasis added). When asked to review Lampley's personnel file to find the warning, however, Ms. Hokanson acknowledged that a written warning was not contained in the file.

This petition addresses the distinction between misconduct of a corporate representative sufficient to impose liability for compensatory damages on the employer and the level of purposeful corporate misconduct required to support the imposition of punitive damages against the corporation. *Kolstad* recognizes that a corporate defendant may be

assessed punitive damages for unlawful employment practices; however, the thrust of that decision, consistent with the decisions of this Court identifying due process limits to punitive damages imposed by the states and the recognition in cases like *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575, 116 S.Ct. 1589 (1996), and more recently in *State Farm Mutual Auto Insurance Company v. Campbell*, __ U.S. __, 123 S. Ct. 1513, 1521 (2003), that "the most important indicium of the reasonableness of a punitive damage award is the degree of reprehensibility of the defendant's conduct," is to recognize that a corporate defendant should be protected from the threat of punitive damages in those instances in which the misconduct giving rise to suit is something other than a reflection of corporate policy or practice.

In essence, *Kolstad* recognizes that a corporate employer cannot be forced to suffer punitive damages solely on the basis of the misdeeds of employees¾rather, it is necessary to establish that the corporation, as a matter of policy or rank indifference to employees' rights, fostered, promoted or implemented the illegal employment practices giving rise to a plaintiff's complaint. *Kolstad* reaches a common-sense, fair and understandable resolution: An employer can insulate itself from punitive damages under the federal employment statutes if it attempts genuinely and in good faith to define a corporate policy to comply with the law, but if that stated policy is not genuine, is known not to be followed or is interposed to mask senior management's true discriminatory attitudes and agendas, a court will not allow the empty words of the ignored policy to protect the company when its employees knowingly and intentionally violate the employment laws.

Here, at most, a corporate subordinate, contrary to company policy, fired an employee for an unlawful reason, then misled his superiors as to the basis for that decision, and the corporation, believing in the truth of the information supplied by that subordinate, presented partially incorrect information to the EEOC in response to the terminated employee's complaints. To subject the corporation to punitive damages as a result, let alone punitive damages in such a magnitude that the exemplary damages, by themselves, approach the statutory maximum recovery available to any victim of employment discrimination, severely undercuts not only the *Kolstad* protection against vicarious punitive damages but the Court's recent holdings that the validity of punitive damages is fundamentally linked to the degree of reprehensibility of the defendant's conduct.

Onyx never approved of discrimination, it promulgated policies to prohibit discrimination of every kind, it made sure that employees like Lampley knew that the EEOC was an available recourse, and its branch manager acknowledged that he understood that he could not fire an employee for an illegal reason. Lampley made no showing that Onyx's policy was not genuine, was known to be ignored or was interposed to mask a true discriminatory intent. The imposition of punitive damages against Onyx in a case like this reduces *Kolstad* to an empty promise and imposes on employers an impossible burden to go beyond establishment of a policy to comply with the law; instead, it requires the employer to prevent its agents from violating the federal employment law in order to avoid punitive damages.

Kolstad did not challenge or limit application of traditional agency law to insulate the employer from compensatory damages arising from the wrongful acts of its

agents, and Onyx does not seek that relief here. In the context of punitive damages, however, the analysis underlying *Kolstad* requires reversal because an employer saddled with punitive damages nearly equal to the maximum total recovery permitted by law, assessed on the basis of a subordinate's violation of company policy, has virtually no incentive even to adopt anti-discrimination policies in the first place if it cannot guarantee that its policy will be universally followed.

The Record evidence stood undisputed that Ms. Hokanson was advised several days before Lampley went to the EEOC that the branch office had decided to terminate Lampley. The jury concluded that Strater, as Onyx's agent with the power to terminate Lampley, had not made a decision to terminate Lampley before Lampley went to the EEOC, but as far as Ms. Hokanson knew, a decision had been made by the branch office days earlier to terminate an employee for insufficient performance.

B. The Court of Appeals' Decision Condones Excessive Punitive Damages and Conflicts with its Earlier Precedent Recognizing that the Congressional Cap on Compensatory and Punitive Damages Should be Reserved for the Most "Egregious" Cases

The Congressional cap on recoverable damages requires careful consideration of the judgment in this case. The district court here has endorsed the absolute highest damages recoverable by any single plaintiff against any single employer for any imaginable violation of an employee's civil rights, in a case when the evidence of emotional injuries was scant, to put it mildly, and, viewed in the light most indulgent of the jury's verdict, the defendant's insensitivity to the plaintiff's rights was not the result of corporate policy or

sanctioned practice. The jury's verdict of $345,000 in compensatory and punitive damages represents nearly six and one-half years' salary, and, even after reduction by the district court to the statutory maximum of $300,000 combined compensatory and punitive damages, the judgment represents more than five and one-half years' salary for an employee who was able to secure a better job within months and never pursued treatment for his emotional injuries until years after his termination and just a few months before trial.

Regardless of whether the district court's reduction of damages was applied to the punitive or the compensatory aspects of the jury's verdict, the punitive damages are excessive in a case like this. At least 75 percent of plaintiff's ultimate recovery here represents punitive damages, and, as such, the judgment below represents not a determination that plaintiff's damages are severe but, rather, that defendant's conduct warrants sanctions of the highest levels permitted by law. Onyx requests this Court's review to bring a measure of proportionality to awards under the Civil Rights Act, consistent with holdings in *Gore* and in *State Farm* that the most important indicium of the reasonableness of punitive damages is the degree of reprehensibility of the defendant's conduct.

In this respect, Onyx recognizes that Congress established maximum recoveries in the Civil Rights Act and expressly authorized the remedy of punitive damages. However, in the context of that statutory construction, this Court's precedent before and after *Kolstad* concerning due process limitations on punitive damages should apply equally strongly. If the degree of the defendant's reprehensibility is the foremost criterion when assessing the reasonableness of

punitive damages under the Constitution, it should similarly frame the assessment of punitive damages under statute.

In *Hennessy v. Penril Datacomm Networks, Incorporated*, 69 F.3d 1344 (7th Cir. 1995), for example, the Seventh Circuit recognized that Congress' decision to place an upper limit on recoverable compensatory and punitive damages warranted the logical conclusion that "the maximum permissible award against a company of Penril's size should be reserved for egregious cases." 69 F.3d at 1355. In that case, not deemed suitably egregious to justify the statutory maximum, a co-worker (later a supervisor) took plaintiff and others to a striptease bar and yelled and cheered for her and another female co-worker to perform a striptease and then, driving her back to the hotel, compared other women's breasts to the breasts of the dancers. Six months later, on another business trip, that same co-worker propositioned plaintiff in a hotel cocktail lounge.

Three months later, plaintiff became pregnant, and four months thereafter, the co-worker became her supervisor. The following month, her supervisor commented on plaintiff's pregnancy, expressing surprise because he had thought of her previously as a "career woman," and, at virtually the same time, the corporate president stated he did not like to hire women in the field because they get pregnant. When plaintiff returned to work after her pregnancy leave, she was told she had been placed on probation, despite her prior performance as her supervisor's second-most productive sales representative, her supervisor began to paper her personnel file with negative reports without plaintiff's knowledge, she was given short notice to give up her office and she became the only sales representative in the company, out of 35, who did not have an office outside of the home.

She was fired eleven days after she wrote to her supervisor to express her concerns about her probationary status and her perception of sex discrimination and replaced by a male sales representative who received an office from which to work. 69 F.3d at 1347-48.

Hennessy did not rise to a level of misconduct to warrant the statutory maximum damages, despite evidence that the corporate president voiced some of the same prejudices as the plaintiff's supervisor, and despite the fairly extended period of harassment and discrimination. This case is far less severe than *Hennessy*, even assuming that Strater's misconduct can properly be attributable to Onyx in the context of punitive damages.

There is no basis to deny that the jury's determination of compensatory damages for the retaliatory discharge claim was itself the result of passion and prejudice rather than the trial evidence, and the punitive damages assessed here dwarf the compensatory damages award, even if the entire post-verdict reduction in the judgment were assessed against the punitive damage award. In connection with Lampley's other claim, the jury determined that Lampley's damages resulting from the discriminatory job practices he suffered gave rise to compensatory damages of $1,000, and Lampley used the same word—"devastated"—to describe the feelings he had before he was fired (when he came to believe he had been the victim of racial discrimination) and the feelings he had after he was fired. No attempt was made by Lampley at any time to differentiate between the types of feelings he experienced after realizing he had been a victim of racial discrimination and the types of feelings he continued to experience when that racial discrimination had been joined by retaliatory discharge.

In this case, however, the Seventh Circuit rejected out of hand Onyx's argument that the statutory maximum award of damages should be reserved for the most egregious cases. Even though the facts of this case fall far short of the facts in *Hennessy*, and, in *Hennessy*, the Seventh Circuit reduced damages below the statutory cap notwithstanding the fact that there was evidence to suggest that the defendant's corporate president held and voiced some of the same prejudices as the supervisory employee whose misconduct gave rise to suit, the court affirmed the $300,000 judgment entered in this case.

Recognizing Congress' determination to permit punitive damages, but to limit total damages for employers as large as Onyx to $300,000, as well as this Court's holdings before and after *Kolstad*, a judgment in the full amount permitted by law of $300,000, overwhelmingly comprised of punitive damages, cannot withstand review in a routine discharge case evidencing neither reprehensible conduct proportionate to the award nor severe actual or threatened injury to the employee.

CONCLUSION

The petition for a writ of certiorari should be granted because the court of appeals' judgment appears to be incomprehensibly inconsistent with this Court's and Congress' concept of fairness in the application of punitive damages to an employer's conduct under even the most aggressive application of one's civil rights.

Respectfully submitted,

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT DECIDED AUGUST 18, 2003

In the
UNITED STATES COURT OF APPEALS
For the Seventh Circuit

No. 02-3201

GERALD P. LAMPLEY,

Plaintiff-Appellee,

v.

ONYX ACCEPTANCE CORP.,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 00 C 3901—**William J. Hibbler**, *Judge.*

ARGUED MAY 27, 2003—DECIDED AUGUST 18, 2003

Before ROVNER, DIANE P. WOOD, and WILLIAMS, *Circuit Judges.*

WILLIAMS, *Circuit Judge.* Gerald Lampley believed that he had been denied a promotion by Onyx Acceptance Corp. as a result of race discrimination. He complained to the Equal Employment Opportunity Commission (EEOC) and shortly thereafter was fired. Lampley then filed a Title VII suit against

Appendix A

Onyx and a jury concluded that he was a victim of race discrimination, awarding him $1,000 in compensatory damages. The jury also awarded compensatory and punitive damages totaling $345,000 for retaliatory discharge, although this amount was later reduced by $45,000 to comply with a statutory cap. Onyx appeals the retaliatory discharge award, arguing that the award is excessive and that the punitive damages issue should not have gone to the jury. Because we find that a jury could reasonably have determined that punitive damages were warranted and that a total award of $345,000 was not inappropriate, we affirm.

I. BACKGROUND

Gerald Lampley, an African-American, was employed as an account manager with Level 1 buying authority[1] by Onyx Acceptance Corp., a California-based company engaged in "indirect automobile finance." Lampley worked out of Onyx's Rosemont, Illinois branch office under Mike Strater, the "dealer center manager" for that office. (Strater was an assistant manager when Lampley was first hired in February 1998; he was promoted to manager in October 1998.) Beginning in the fall of 1999, Lampley repeatedly asked Strater to give him Level 2 buying authority,[2] but his requests were denied. Lampley ultimately determined that race discrimination was the reason for Strater's failure to promote him.

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1. A manager with Level 1 authority could approve loans up to $15,000 without counter-approval.

2. A manager with Level 2 authority could approve loans up to $20,000 without counter-approval.

Appendix A

For resolution of discrimination issues, Onyx's policy was to have employees call the Human Resources Department at corporate headquarters in California. There was a notice in Lampley's office stating that employees should report suspected discrimination to the EEOC. Upon determining that he was a victim of race discrimination, Lampley did not call headquarters, but instead talked to Michelle Bland about a comment Lampley found to be racially offensive that he believed Strater had made.[3] According to Lampley, Bland advised him to work things out with Strater. Lampley next went to the EEOC to file a race discrimination claim on November 26, 1999. Strater called Lampley at that time, and Lampley explained that he was at the EEOC filing a complaint.[4]

Strater scheduled a meeting with Lampley for November 29, 1999. According to Lampley, at the meeting (which was also attended by Joseph Long, one of Strater's assistant managers) Strater told Lampley that "[w]e can't have anybody working here who complains and files complaints to the EEOC. I want your resignation." Lampley refused, and Strater fired him. Lampley then returned to the EEOC and filed a retaliatory discharge claim. During the EEOC investigations of both the race discrimination and retaliatory discharge

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3. When Lampley was first hired, Bland was the dealer center manager in Chicago. Bland was a regional vice-president at the time of trial.

4. Strater acknowledged that the EEOC was mentioned during the conversation; he testified that Lampley's exact words were "I'm at EEOC checking out my options." Strater also admitted that he was aware of federal anti-discrimination laws.

claims, Onyx told the EEOC that Strater's failure to promote Lampley and Lampley's ultimate termination were due to Lampley's inadequate performance, and provided supporting documentation. The EEOC dismissed Lampley's charges and issued him right-to-sue letters.

In April 2002, after settling his claims against Strater, Lampley pursued a two-count complaint against Onyx, claiming race discrimination and retaliatory discharge under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 *et seq.* At trial, he provided data that countered the documentation Onyx had sent the EEOC to support its claim that Lampley had performance problems. For instance, Onyx told the EEOC that Lampley obtained $295,767 and $367,550 in loans in September and October 1999, respectively. However, Lampley's documents showed that he had obtained $395,767 in loans in September and $767,550 in October. The target loan amount for these months was $400,000. Lampley, whose wife was pregnant at the time of his termination, explained that he felt "devastated" upon being fired, and is "definitely changed from it." His wife also testified regarding Lampley's altered emotional state following his termination, describing him as "depressed." She also said that although Lampley did not seek psychiatric help, the couple eventually received counseling through church services.

Strater and Long both asserted that at Lampley's termination meeting, there was no discussion of or reference to the EEOC, and that a meeting had in fact been scheduled for the previous Friday for the purpose of terminating Lampley. Strater further stated that he, Long, and Kurt

Wheeler, an assistant manager, had decided to fire Lampley on November 22, 1999, and had called Rosie Hokanson, a vice-president and human resources director, on that date to inform her of their decision.

Bland and Hokanson said that Onyx had an anti-discrimination policy, but no physical evidence of this policy was provided to the jury.[5] Hokanson was responsible for providing documentation to the EEOC during the EEOC investigations, including the documents suggesting that Lampley was not performing satisfactorily. When cross-examined about a statement she had sent to the EEOC stating that Lampley "was given a formal written warning via telephone on November 24, 1999 by his immediate supervisor, Kurt Wheeler, regarding his performance issues," Hokanson said she verified the existence of the written warning by pulling Lampley's personnel file. However, when she was asked to review Lampley's personnel file and find the written warning, Hokanson acknowledged that it was not there.

The jury ultimately awarded Lampley $1,000 in compensatory damages and no punitive damages on his race discrimination claim. With respect to the retaliatory discharge claim, the jury awarded $75,000 in compensatory damages and $270,000 in punitive damages. The district court denied Onyx's motions for judgment notwithstanding the verdict, a new trial, and remittitur below the statutory maximum. However, at the request of both parties, the district court reduced the judgment from $345,000 to $300,000 in order

5. Lampley did recall that during orientation at Onyx, he was told to contact headquarters should any problems arise.

to satisfy the $300,000 statutory cap for a company of Onyx's size. *See* 42 U.S.C. § 1981a(b)(3). The court did not explain whether the compensatory damages award, the punitive damages award, or both were being diminished. Onyx appeals both the compensatory damages award and punitive damages award resulting from the retaliatory discharge claim, asserting that the punitive damages issue should never have gone to the jury, and that the $300,000 award is excessive even if it is within the statutory cap.

II. ANALYSIS

A. Sufficiency of the Evidence Regarding Punitive Damages

Onyx asserts that there was insufficient evidence to warrant the imposition of punitive damages. The question of whether Onyx is entitled to judgment as a matter of law on this issue is subject to de novo review, with the evidence and all reasonable inferences taken in the light most favorable to Lampley. *Mathur v. Bd. of Trs. of S. Ill. Univ.*, 207 F.3d 938, 941 (7th Cir. 2000). More specifically, we ask "whether no rational jury could have found for the plaintiff." *Id.* (internal quotation marks omitted).

A plaintiff may recover punitive damages under Title VII if three requirements are satisfied.[6] Specifically, the plaintiff must establish that the employer "acted with

6. As explained in 42 U.S.C. § 1981a(b)(1), such recovery is allowed "if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual."

knowledge that its actions may have violated federal law" and that "the employees who discriminated against him are managerial agents acting within the scope of their employment." *Bruso v. United Airlines*, 239 F.3d 848, 857-58 (7th Cir. 2001) (citing *Kolstad v. Am. Dental Ass'n*, 527 U.S. 526, 535, 543 (1999)). However, even if these two prongs are met (and Onyx concedes that a jury could find that they are in this case), "the employer may avoid liability for punitive damages if it can show that it engaged in good faith efforts to implement an antidiscrimination policy." *Id.* (citing *Kolstad*, 527 U.S. at 545). Onyx claims that it has engaged in good faith efforts, and thus the district court's decision to let the jury assess punitive damages was in error.

We are unpersuaded by Onyx's argument. Onyx allegedly had a formal anti-discrimination policy, although it is difficult to ascertain the contours of this policy without physical evidence of its existence. But even assuming that the policy included appropriate procedures, we explained in *Bruso* that "although the implementation of a written or formal antidiscrimination policy is relevant to evaluating an employer's good faith efforts at Title VII compliance, it is not sufficient in and of itself to insulate an employer from a punitive damages award." *Id.* at 858. Here, there was sufficient evidence for a jury to believe that Onyx failed to engage in good faith efforts at Title VII compliance after it became aware of Lampley's retaliatory discharge claim.

Specifically, Lampley provided statistics prepared by Wheeler that showed that Lampley was meeting (and at times greatly exceeding) company expectations. This data flatly contradicts the statistics that Strater and Hokanson presented

to the EEOC to establish that Lampley was a poor performer and that this was the cause of his termination. The jury could have reasonably believed that the numbers Onyx provided (which Hokanson claimed were verified before she sent them to the EEOC) were doctored solely to discredit Lampley. Additionally, when Hokanson failed to produce evidence of the written reprimand that she insisted she had seen in Lampley's personnel file, the jury could have reasonably believed that no such reprimand existed. It could have instead determined that the reprimand was merely a trumped-up charge designed to mislead the EEOC into believing that Onyx had planned to terminate Lampley long before he complained to the agency. Indeed, the jury specifically found that Onyx had no plans to terminate Lampley prior to the filing of his initial EEOC complaint.[7] In *Bruso*, we found that evidence of a sham investigation designed to discredit the plaintiff was sufficient to defeat the defendant's motion for judgment as a matter of law with respect to a punitive damages claim. *Id.* at 861. Here, we have a similar situation. Because a jury could have found that Onyx engaged in a cover-up rather than a good faith investigation of Lampley's retaliatory discharge claim, we find that the punitive damages issue was properly before the jury.[8]

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7. In light of this finding, it is puzzling that Onyx continues to insist that corporate headquarters was notified that Lampley would be fired for poor performance long before he went to the EEOC.

8. Onyx complains that by going to the EEOC instead of first contacting the Human Resources Department, Lampley deprived Onyx of the opportunity to engage in good faith efforts to remedy the race discrimination problem. This may well be the case. However, the jury presumably addressed this point when it declined to award punitive damage for Lampley's race discrimination claim, and the retaliatory discharge claim is entirely separate.

B. The Damages Award

Onyx further contends that both the compensatory and punitive damages that the jury awarded for retaliatory discharge are excessive, and the district court therefore erred in refusing to grant Onyx a new trial on damages or to set damages below the $300,000 statutory maximum. This court reviews a district court's denial of a motion for remittitur or a new trial on damages for an abuse of discretion. *See Fine v. Ryan Int'l Airlines*, 305 F.3d 746, 755 (7th Cir. 2002) (citing *Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 433 (2001)) (explaining that punitive damages awards are reviewed for an abuse of discretion if no constitutional violation is alleged); *EEOC v. AIC Sec. Investigations, Ltd.*, 55 F.3d 1276, 1285, 1287 (7th Cir. 1995).

1. Compensatory Damages

When assessing the propriety of a compensatory damages award, relevant inquiries may include "whether the award is monstrously excessive," "whether there is no rational connection between the award and the evidence," and "whether the award is roughly comparable to awards made in similar cases." *AIC Sec. Investigations*, 55 F.3d at 1285 (internal quotation marks omitted). We find that the award in this case is by no means monstrously excessive, whether analyzed at $75,000 as reflected in the jury's verdict or at $30,000 based on the assumption that the district court's $45,000 reduction applied solely to the compensatory damage award. There was a rational connection between the award and the evidence presented. Although Lampley found a new job two months after his termination, both he and his wife

provided detailed testimony explaining the termination's negative effects on Lampley's emotional state, some of which linger today. The jury was also told that Lampley sought church counseling one year after his termination. Moreover, Lampley testified that because his wife was pregnant at the time of his termination, he was especially stressed about the ability to deal with costs associated with child-rearing in light of his unemployment. Based on this evidence, a jury reasonably could have believed that $75,000 was necessary to fully compensate Lampley for his pain and suffering.

Onyx points to cases in which the plaintiff received less than $75,000 in compensatory damages to show that Lampley's award is out of line. However, these cases are easily distinguishable. For instance, in *Avitia v. Metropolitan Club of Chicago, Inc.*, 49 F.3d 1219, 1227-29 (7th Cir. 1995), we diminished an award from $21,000 to $10,500 because the degree of emotional distress was not proven; only 14 lines of testimony addressed emotional distress. By contrast, in the instant case, there were numerous pages of testimony regarding emotional distress. In *Merriweather v. Family Dollar Stores of Indiana, Inc.*, 103 F.3d 576 (7th Cir. 1996), the plaintiff's $25,000 award was remitted by approximately $6,000. However, the plaintiff's retaliatory discharge in *Merriweather* was only one of several factors, such as her father's death, affecting the plaintiff's emotional state. *Id.* at 581. Here, Onyx has not shown that Lampley's emotional distress was the result of anything but the termination.[9]

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9. Onyx alleges that Lampley was already experiencing feelings of depression and loss of confidence before his termination because he realized that he was not going to be able to tell his family that he

(Cont'd)

While it is true that plaintiffs in *Peeler v. Village of Kingston Mines*, 862 F.2d 135 (7th Cir. 1988) and *AIC Security Investigations* received only $50,000 in 1988 and 1995 respectively despite suffering severe emotional and financial hardship, these numbers do not account for inflation,[10] and more recent cases reveal that the compensatory damage award in the instant case is not an outlier. For example, in *Tullis v. Townley Engineering & Manufacturing Co.*, 243 F.3d 1058 (7th Cir. 2001), this court upheld an $80,000 compensatory damages award to a victim of retaliatory discharge. The jury awarded that amount based solely on the plaintiff's testimony that he felt "low," "degraded," and "back-stabbed," and experienced financial difficulties with respect to his utility bills, child support, and clothing and entertainment purchases for his children. *Id.* at 1067-68. Moreover, in light of its rational connection to the evidence, we would consider Lampley's award to be within the bounds of reasonableness even without relying on the comparison to *Tullis*. A court should not substitute a jury's damages verdict with its own figure merely because a case with similar facts has not yet arisen, or because a plaintiff

(Cont'd)

had been promoted. However, the jury ostensibly addressed the emotional distress caused by the discrimination when it awarded $1,000 in compensatory damages for Lampley's discrimination claim. Onyx has presented nothing to suggest that the jury confused cause and effect with respect to the emotional distress resulting from his *retaliation* claim.

10. For instance, as this court explained in *Tullis v. Townley Engineering & Manufacturing Co.*, 243 F.3d 1058, 1069 (7th Cir. 2001), the *Peeler* plaintiff's $50,000 award in 1988 was worth approximately $70,000 in 1999 according to a Statistical Abstract.

in a similar case was perhaps not able to plead his facts to the jury as well. Awards in other cases provide a reference point that assists the court in assessing reasonableness; they do not establish a range beyond which awards are necessarily excessive. Due to the highly fact-specific nature of Title VII cases, such comparisons are rarely dispositive. We therefore conclude that the district court did not abuse its discretion in denying a new trial or remittitur with respect to the compensatory damages award.

2. Punitive Damages

Onyx also contends that the punitive damages award, whether analyzed as $270,000 or $225,000 (the latter figure assumes that the district court's $45,000 reduction applies solely to the punitive damages award), "exceeds what is necessary to serve the objectives of deterrence and punishment," and should therefore be set aside. *AIC Sec. Investigations*, 55 F.3d at 1287. Specifically, Onyx complains that it did not promote the belief that it was appropriate to violate federal law, and was not even aware of Lampley's contact with the EEOC until after he had been fired; thus, the punitive damages award is not an appropriate assessment of Onyx's blameworthiness. *See EEOC v. Indiana Bell Telephone Co.*, 256 F.3d 516, 527 (7th Cir. 2001) (en banc).

Onyx's argument ignores the fact that based on the record, a jury could well have believed that after upper-level management officials such as Hokanson learned of Lampley's retaliatory discharge claim through the EEOC, they determined that Lampley had in fact been illegally terminated but chose to discredit him rather than admit to the facts

surrounding his termination. Furthermore, the jury could reasonably have found that an award smaller than $270,000 would not have curbed such behavior. In *AIC Security Investigations*, this court stated that "evidence did show that AIC had gross yearly revenues of several million dollars. We think it reasonable to suppose that a sizeable award [in that case, $150,000 in punitive damages][11] is both suitable and necessary to punish and deter a corporation of this size." 55 F.3d at 1287. At trial, Strater testified that his office, one of twenty Onyx offices in existence at the time of trial, acquired loans with a face value of between $100,000,000 to $150,000,000 annually. Thus, the jury did not act unreasonably in this instance when it determined that a $270,000 award was necessary to ensure that Onyx sat up and took notice.[12]

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11. The punitive damages award was in addition to a $50,000 compensatory damages award, bringing the total award to the statutory maximum of $200,000 for a company of AIC's size.

12. Onyx also relies on *EEOC v. Indiana Bell Telephone Co.*, 256 F.3d 516 (7th Cir. 2001) (en banc), in which the defendant employer allowed a male employee to engage in numerous acts of gross sexual misconduct before taking appropriate action against the offending employee. According to Onyx, Indiana Bell's behavior was far more egregious than Onyx's own actions, but the three plaintiffs in *Indiana Bell* received a total of $635,000 in punitive damages (following the district court's remittitur of a $1,050,000 jury verdict), less than the $270,000 the jury awarded Lampley. We fail to see how *Indiana Bell*, a sexual harassment case centered around an employer's inaction, is even remotely similar to the case at issue, in which the jury could have found that Onyx took affirmative steps to cover up its misdeeds.

Onyx cites *Hennessy v. Penril Datacomm Networks, Inc.*, 69 F.3d 1344, 1355 (7th Cir. 1995) for the proposition that the statutory maximum, or something close to it, can only be awarded in the most egregious cases. But as we just explained, the evidence clearly supported a finding that Onyx engaged in a cover-up in flagrant violation of Title VII, thus warranting a large punitive damages award. Additionally, we stated in *Fine v. Ryan International Airlines*, 305 F.3d 746 (7th Cir. 2002) that because Title VII cases are so fact-specific, "we will not normally disturb an award of damages in a Title VII case at or under the statutory cap, as this decision is largely within the province of the jury." *Id.* at 755 (internal quotation marks omitted); *see also Caudle v. Bristow Optical Co.*, 224 F.3d 1014, 1028 (9th Cir. 2000) ("Reflecting our general deference to jury verdicts, we have never required the district court to adjust a jury's punitive damages verdict so that it is proportional, in the court's view, to the defendant's wickedness. Such proportional adjustments are left to the jury itself."). In sum, Onyx has not provided a compelling reason for disturbing the award in this instance. We therefore find that the district court did not abuse its discretion in denying remittitur or a new trial with respect to the punitive damages award.

III. CONCLUSION

For the foregoing reasons, the decision of the district court is AFFIRMED.

A true Copy:

Teste:

_____

Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX B — MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS DATED JULY 24, 2002

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

NO. 00 C 3901

GERALD P. LAMPLEY,

Plaintiff

v.

ONYX ACCEPTANCE CORPORATION, et al.

Defendants

JUDGE WILLIAM J. HIBBLER

MEMORANDUM AND ORDER

Gerald Lampley ("Plaintiff") filed suit against Onyx Acceptance Corporation ("Defendant") and alleged racial discrimination in his employment with Defendant and retaliatory discharge following the filing of his charge with the EEOC. Following a trial, the jury returned a verdict in favor of Plaintiff in the amount of $1,000 compensatory damages for the discrimination in employment claim (Count I) and $75,000 compensatory damages and $270,000 punitive damages for the retaliation claim (Count II).

Now, pursuant to Federal Rule of Civil Procedure 50(b), Defendant has filed the present motions for a new trial, judgment notwithstanding the verdict and/or remittitur. The issues have been fully briefed and are now ready for adjudication. For the following reasons, the Court GRANTS in part and DENIES in part Defendant's motions for post-judgment relief.

I. Statutory Cap of $300,000

Defendant maintains the 1991 amendment to the Civil Rights Act caps the combined value of compensatory and punitive damages at $300,000 for employers with more than 500 employees, i.e. Defendant. *See Hennessy v. Penril Datacomm Networks, Inc.*, 69 F.3d 1344, 1351-56 (7th Cir. 1995). Accordingly, pursuant to 42 U.S.C. § 1981a(b)(3), Defendant asks the Court to remit the combined value of the damages under Count II from $345,000 to $300,000. Plaintiff concurs in Defendant's request. Thus, the Court remits the damages awarded in Count II by $45,000.

II. Post-Judgment Relief

Federal Rule of Civil Procedure 50 permits a court to grant a motion for judgment as a matter of law when "there is no legally sufficient evidentiary basis for a reasonable jury to find for [a] party on [an] issue." Fed.R.Civ.P. 50. The Court must "examine the evidence presented, combined with any reasonably drawn inferences, and determine whether that evidence sufficiently supports the verdict when viewed in the light most favorable to the non-moving party." *Tincher v. Wal-Mart Stores, Inc.*, 118 F.3d 1125, 1129 (7th Cir. 1997)

(citing *Emmel v. Coca-Cola* Bottling Co., 95 F.3d 627, 629 (7th Cir. 1996)). The Court's examination is limited and narrowly defined. The Court's "role is not to reweigh or reevaluate the evidence – that task is reserved to the jury as factfinder (–) but to determine whether there is any basis upon which a reasonable jury could reach the conclusion that it did." *Frazier v. Norfolk & Western Ry. Co.*, 996 F.2d 922, 924 (7th Cir. 1993). Essentially, the Court is "limited to assessing whether no rational jury could have found for the plaintiff." *Emmel*, 95 F.3d at 630.

The Court finds Defendant's arguments as equally unpersuasive here as the jury presumably found them at trial. "The defendant who challenges a jury's award of compensatory or punitive damages based on the claim of insufficient evidence bears a heavy burden. The jury is the trier of fact, charged with determining the credibility of witnesses, weighing the evidence, and drawing reasonable inferences. Its findings are traditionally given great weight." *Littlefield v. McCuffey*, 954 F.2d 1337, 1348 (7th Cir. 1992). The Court finds there was a legally sufficient evidentiary basis for the jury's finding. Further, the Court finds no support for the proposition the jury failed to act reasonably when it found for Plaintiff. Therefore, the Court denies Defendant's motion for judgment notwithstanding the verdict.

In the alternative, Defendant moves for the Court to set aside the jury's verdict, vacate the judgment and to either grant a new trial or a remittitur. The Court may vacate a jury's verdict if it concludes the award was "monstrously excessive" or the award has no rational connection to the evidence. *Frazier*, 996 F.2d at 925; *see also DeBlasio v. Illinois Central*

R.R., 52 F.3d 678, 687-89 (7th Cir. 1995) and *Holmes v. Elgin, Joliet & Eastern Ry. Co.*, 18 F.3d 1393, 1395-97 (7th Cir. 1994). The Court may consider if the award is out of line relative to other awards in similar cases. *Frazier*, 996 F.2d at 925.

In the present case, the Court finds a rational connection between the evidence and the award, i.e. the jury's award is supported by the evidence. Moreover, Defendant's motions for post-judgment relief are irrational, unreasonable, replete with errors, poorly drafted and littered with remarkably inane arguments. For example, Defendant states "[t]he Court erred, and unfairly prejudiced defendant when it permitted scores of African-American schoolchildren to enter the courtroom during the charge to the jury, in full view of the jury, during a racial harassment and race-based discrimination case. (No objection was made due to the severe prejudice that would have inured to defendant by making an objection at that time.)" (Def. Mot. for New Trial or Remittitur, ¶17, p.8.) These approximately twenty young people visited the court on a school field trip and quietly and politely observed the public operations of court. The assertion that Defendant's loss was due to these children having access to a public courtroom is totally without merit.

Defendant further challenges the jury's damage award as "monstrously excessive" when compared to other awards in similar cases. However, the present case is similar and consistent with other recent decisions in the Seventh Circuit. *See Spina v. Forest Preserve of Cook County*, No. 98 C 1393, 2001 WL 1160955 (N.D.Ill. May 31, 2002.) (a female patrol officer sued the defendant police district claiming sex

discrimination and retaliation in violation of Title VII; the plaintiff alleged she was subjected to inappropriate touching, offensive jokes and pornographic literature by he fellow officers and that her supervisors ignored her complaints; she further alleged other officers used several means of retaliation against her when she filed a claim with the EEOC; the jury awarded the plaintiff $3,000,000): *King v. State of Ill. Office of Banks and Real Estate*, No. 97 C 5463, 2002 WL 1275420 (N.D.Ill. Nov. 2001) (a black male employee sued the defendant state bank regulatory agency claiming race discrimination and retaliation in violation of Title VII; the plaintiff alleged he was passed over for promotions and subjected to discrimination regarding salary and performance evaluations because of his race; he further alleged that the defendant retaliated against him when he complained of the discriminatory treatment; the jury awarded the plaintiff $304,170); *Tart v. Elementis Pigments, Inc.*, 99 C 388, 2001 WL 1880323 (S.D. Ill. Jun. 21, 2001) (a male employee sued the defendant company claiming disability discrimination and retaliation in violation of the Americans with Disabilities Act; the plaintiff alleged the defendant failed to accomodate his disability and failed to rehire him in retaliation for his workers' compensation claim; the jury awarded the plaintiff $4,160,000, including $2,955,000 in punitive damages and $500,000 in pain and suffering damages); C*ompres v. GCC Drum, Inc.*, No. 99 C 6564, 2000 WL 33281044 (N.D.Ill. Oct. 2000) (a 45-year-old Hispanic male machine operator sued the defendant manufacturing company claiming race discrimination and retaliation in violation of Title VII; the plaintiff alleged he was subjected to racial slurs and insults by his supervisor; he further alleged he was denied a pay raise, his paycheck was temporarily withheld and his overtime

was cut in retaliation for his filing a complaint of the discrimination; the defendant denied the allegations and claimed that racial slurs were an expression of friendship; the jury awarded him $4,000,000, including $3,000,000 in punitive damages).

While Defendant may be correct there may be similar cases with smaller awards, the above cases illustrate the many similar cases where amounts greater than the amount involved in the instant case have been awarded. Reviewing the jury's verdict and award in light of the relevant case law, the Court cannot say the jury's award, although large, shocks the Court's judicial conscience.[1]

For the foregoing reasons, the Court GRANTS in part and DENIES in part Defendant's Motion for New Trial or Remittitur (#42-1) and Defendant's Motion for Judgment Notwithstanding the Verdict (#43-1).

IT IS SO ORDERED.
DATE: July 24, 2002

s/ William J. Hibbler
Hon. William J. Hibbler
United State District Court Judge

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1. "When a defendant goes for broke, staking its all on convincing the jury to award zero damages – fearing otherwise a compromise verdict – it risks being hit with a verdict much larger than if it had offered the jury an alternative estimate of damages to the plaintiff's. It should not expect the appellate court to relieve it from the consequences of its gamble." *Avitia v. Metropolitan Club of Chicago, Inc.*, 49 F.3d 1219, 1230 (7th Cir. 1995). The same principle applies to post trial motions for relief at the trial court.

APPENDIX C — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION DATED MAY 15, 2002

UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

Case Number: 00 C 3901

GERALD LAMPLEY

v.

ONYX ACCEPTANCE CORP.

JUDGMENT IN A CIVIL CASE

■ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.

IT IS HEREBY ORDERED AND ADJUDGED that judgment is entered in favor of plaintiff and against defendant in the amount of $1,000.00 compensatory damages on the discrimination in employment claim. It is further ordered and adjudged that judgment is entered in favor of plaintiff and against defendant in the amount of $75,000.00 compensatory damages and $270,000.00 punitive damages on the retaliation claim.

Appendix C

Michael W. Dobbins, Clerk of Court

s/ Jacquelyn H. Collier
Jacquelyn H. Collier, Deputy Clerk

Date: 5/15/2002
This order is entered nunc pro tunc 4/30/02

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT DENYING PETITION FOR REHEARING DATED SEPTEMBER 19, 2003

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

September 19, 2003

Before

Hon. Ilana Diamond Rovner, Circuit *Judge*
Hon. Diane P. Wood, *Circuit Judge*
Hon. Ann Claire Williams, *Circuit Judge*

No. 02-3201

Gerald P. Lampley,

Plaintiff-Appellee,

v.

Onyx Acceptance Corp.,

Defendant-Appellant.

Appeal from the United States District
Court for the Northern District
of Illinois, Eastern Division

No. 00 C 3901

William J. Hibbler,
Judge.

Appendix D

ORDER

On consideration of the petition for rehearing and rehearing en banc filed by counsel for Defendant-Appellant Onyx Acceptance Corp. on September 2, 2003, all members of the original panel have voted to DENY the petition for rehearing. No judge in regular active service requested a vote on the petition for rehearing en banc.

Accordingly, the petition for rehearing is DENIED.

APPENDIX E — STATUTES INVOLVED

42 U.S.C.S. § 1981a

§ 1981a. Damages in cases of intentional discrimination in employment

* * *

(b) Compensatory and punitive damages. (1) Determination of punitive damages. A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

* * *

(3) Limitations. The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party—

* * *

(D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $300,000.

* * * *

(2)

No. 03-901

Supreme Court, U.S.
FILED
JAN 2 2 2004
OFFICE OF THE CLERK

In The
Supreme Court of the United States

ONYX ACCEPTANCE CORPORATION,

Petitioner,

v.

GERALD P. LAMPLEY,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF THE RESPONDENT IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court of Appeals misapplied properly stated law when it found that there was sufficient evidence to support the jury's finding that Petitioner did not engage in good faith efforts to implement an anti-discrimination policy where no written anti-discrimination policy was introduced into evidence and there was evidentiary support for the finding that the employer engaged in a cover-up, rather than in a good faith effort to comply with the law.

2. Whether the Court of Appeals erred when it found that the combined compensatory and punitive damages jury award of $300,000 as reduced by the trial court to the statutory maximum, was not excessive under the circumstances given the facts of the case, including that no written anti-discrimination policy was introduced into evidence, there was evidentiary support for the finding that the employer engaged in a cover-up rather than in a good faith effort to comply with the law, and where both Respondent and his wife testified to the on-going negative effects of the retaliatory termination on his emotional state.[1]

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[1] Petitioner provides a page and a half of unnecessary detail and then frames the following questions for review: 1) "[W]hether punitive damages can be assessed against the employer on the basis of the decision of managerial agents acting contrary to the employer's anti-discrimination policies promulgated and implemented in good faith"; and 2) "[W]hether damages here, assessed at the maximum amount permitted by law, were excessive." Respondent believes that a review of the record will show a great deal of evidence that at the highest levels the corporation engaged in a cover-up rather than implementing the alleged (never presented) anti-discrimination policy.

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INTRODUCTION

Respondent Gerald P. Lampley, Plaintiff below, submits this Brief in Opposition to the Petition for a Writ of Certiorari, filed by Petitioner Onyx Acceptance Corporation.

Petitioner has advanced no compelling reason for this Court to grant its Writ of Certiorari. Instead, Petitioner has basically renewed its challenge to the sufficiency of the evidence, a challenge rebuffed by the jury, which answered specific special interrogatories, rebuffed by the trial judge, and rebuffed by a unanimous appellate court panel.

Moreover, Petitioner has not identified for the Court, any division among the federal courts on either the application of *Kolstad v. American Dental Association*, 527 U.S. 526, 119 S. Ct. 2118 (1999) or the evidentiary standards for proving mental anguish and emotional distress or of the standards for reviewing punitive damage awards for excessiveness.

Indeed, Petitioner has failed to present this Court with concise questions for review, and has failed to present its arguments with the clarity essential to the ready and accurate understanding of the points requiring consideration by this Court.

Finally, Petitioner has misstated several key facts in its Petition, facts which would bear on the issues before the Court if certiorari were granted. Petitioner even frames his first question for review around a misstatement of fact in the record. Petitioner claims in its Petition that it had an anti-discrimination policy which was promulgated and implemented in good faith, but the jury found otherwise.

The Court of Appeals determined that the jury could have concluded that Petitioner had no anti-discrimination policy either promulgated *or* implemented (no written policy was submitted to the jury) in good-faith, and could have also found that the Petitioner engaged in a cover-up, rather than in a good-faith investigation of Respondent's claims of discrimination and retaliation.

In addition, Petitioner continually states that Respondent was being terminated due to poor job performance and that the decision to terminate Respondent was made prior to his visiting the Equal Employment Opportunity Commission: "The evidence was unrebutted that Lampley's superiors determined to fire Lampley [Respondent] for lack of job performance and advised Ms. Hokanson a week prior to Lampley's termination that Lampley was to be terminated" (*Petition* at 10); and "The Record evidence stood undisputed that Ms. Hokanson was advised several days before Lampley went to the EEOC that the branch office had decided to terminate Lampley" (*Petition* at 14). A great deal of evidence was presented to the contrary, and the jury found otherwise.[2]

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[2] At the request of the Defendant, the trial court submitted a special interrogatory to the jury: "Did Michael Strater or any other Onyx executive, make a decision to terminate plaintiff before plaintiff went to EEOC?" Answer, "No." Petitioner asserts as fact a proposition that is nonsensical at best, *i.e.*, that although the jury believed neither Michael Strater nor any other Onyx executive, made a decision to terminate Respondent before he went to the EEOC, they also believed that Michael Strater had somehow informed corporate offices of a decision that he made to terminate Respondent prior to Respondent's visit to the EEOC – a decision to terminate which the jury expressly found that he did not make.

For all of these reasons, as will be more fully explained below, the Petition for Writ of Certiorari should be denied.

STATEMENT OF THE CASE

The Respondent, Gerald P. Lampley, is African-American. Lampley was employed as an account manager by the Petitioner, Onyx Acceptance Corporation, from February, 1998, until he was fired on November 29, 1999, three days after he had gone to the Equal Employment Opportunity Commission ("EEOC") to file a complaint of race discrimination.

Lampley returned to EEOC and filed a second charge against Onyx, this one for retaliatory discharge. During its investigation of both charges, the EEOC was told by Onyx that Lampley had not been held back because of his race nor fired because he had gone to the EEOC. Rather, Onyx stated, Lampley's performance was inadequate, and provided the EEOC with a spreadsheet demonstrating Lampley's alleged performance deficiencies to back up its proffered legitimate non-discriminatory reasons for its actions. At trial Lampley introduced evidence which showed that the spreadsheet contained false information. Lampley had not only met, but had exceeded his performance goals.

After conducting its investigation the EEOC determined that it could not sustain Lampley's charges and sent him two letters dismissing the charges and giving him the right to sue Onyx. This suit followed.

Trial began on April 22, 2002, before the Hon. William Hibler and an eight person jury. Lampley's Second Amended Complaint alleged violations of Title VII, 42 U.S.C. § 2000e *et seq.*, and consisted of two counts. Count I alleged race discrimination and Count II alleged retaliatory discharge. On April 29, 2002, the jury returned a finding of liability on Count I and awarded $1,000 compensatory damages and nothing in punitive damages. On Count II the jury returned a finding of liability and awarded $75,000 in compensatory damages and $270,000 in punitive damages, which was later reduced by $45,000 to comply with the statutory cap.

On appeal to the Seventh Circuit Court of Appeals, Onyx appealed only the retaliatory discharge award, arguing that the $300,000 award, as reduced, was excessive and that the punitive damages issues should not have gone to a jury. The Court of Appeals found that a jury could have reasonably determined that an award of punitive damages was warranted and that a total award of $345,000 (the unreduced award) was not excessive.

This Petition for a Writ of Certiorari followed.

REASONS FOR DENYING THE WRIT

I. PETITIONER HAS NOT IDENTIFIED ANY DIVISION AMONG THE FEDERAL COURTS ON THE APPLICATION OF *KOLSTAD*.

Petitioner has not identified for the Court any division among the federal courts on the application of *Kolstad*. 527 U.S. 526, 119 S. Ct. 2118 (1999). Nor has Petitioner even suggested that *Kolstad* left unclear the role that a paper policy prohibiting discrimination in the workplace might

play on the issue of imputing vicarious liability for punitive damages to the employer. Instead, Petitioner has basically renewed its challenge to the sufficiency of the evidence, a challenge rebuffed by the jury (which answered special interrogatories), the trial judge, and a unanimous appellate court panel.

Although Petitioner claims again and again that it engaged in good-faith efforts to comply with Title VII, the evidence presented at trial belies that claim. No written anti-discrimination policy was ever presented to the jury. Moreover, Respondent submitted evidence to the jury which, if believed by the jury, would show that Onyx, after finding out about Lampley's claims for race discrimination and retaliatory discharge, doctored data to discredit Lampley. In addition, although a corporate representative testified at trial that she had seen a written reprimand in Lampley's file, at trial, no reprimand could be found. The jury could have believed, and apparently did, that the corporate representative was not being truthful about the written reprimand, that the reprimand never existed, and that the testimony from the Onyx representative was not truthful. It is hardly a good-faith implementation of such an anti-discrimination policy (assuming the jury believes in its existence) to trump up pretextual justifications for termination. Petitioner's assertion of good-faith implementation was flatly rejected at trial due to its inconsistency with documentary and testimonial evidence. *See, e.g, Hall v. Consolidated Freightways Corp. of Delaware*, 337 F.3d 669, 675 (6th Cir. 2003) ("Defendant is correct in its assertion [about *Kolstad*]. However, the record does not support Defendant's assertion in this case.").

Indeed, Petitioner's characterization of the good-faith defense in *Kolstad* as an "empty promise," *Petition* at 13, is

belied by the numerous cases in which employers have been completely insulated from punitive damages due to their actual good-faith efforts. *Kolstad*'s promise can readily be fulfilled, but there must be proof of its predicate, not merely a paper policy (and there was not even a paper policy in this case). Contrary to Petitioner's assertion, the Court of Appeals' decision to affirm the trial court's findings does not undercut *Kolstad*'s protection to employers who have made good-faith efforts to comply with Title VII.

II. PETITIONER HAS FAILED TO PROVIDE ANY COMPELLING REASON FOR THIS COURT TO REVIEW THE COMBINED COMPENSATORY AND PUNITIVE DAMGES AWARD IN THIS CASE.

Again, Petitioner has not identified any division among the federal courts on the evidentiary standard for proving mental anguish and emotional distress in Title VII cases, or any division on the standard for review of punitive damages award for excessiveness.

Rather, Petitioner asks this Court to determine whether the damages were excessive in light of the testimony about how Respondent suffered from his retaliatory discharge and what Petitioner did to camouflage that retaliation. The total of compensatory and punitive damages were, until remitted, slightly over the statutory maximum and quite proportionate on the facts believed by the jury.

The tone and content of the Petition suggest that Petitioner has suffered an injustice by being held liable for retaliation. The record at trial reflects direct evidence

criticizing Respondent for going to the EEOC and explaining that Petitioner cannot have employees who do so. That record also demonstrates that in mounting a defense, Petitioner concocted low figures for Respondent's productivity and an exculpatory time-line for the discharge decision. Finally, that record details how Respondent's life was changed by being discharged in retaliation for going to the EEOC.

Petitioner repeatedly uses a standard – the annual salary of an employee – to illustrate the excessiveness of the damages award. Petitioner does not, however, submit that this Court, or any Court, has or should adopt that standard. Lowly paid employees would be especially vulnerable were damages measured by annual salary.

Equally perplexing is Petitioner's emphasis on its internal processes for addressing employee complaints. Respondent had the absolute right to contact the EEOC rather than invoke the company's internal processes when he believed that he was being discriminated against because of his race. This is not a hostile environment situation where an employer could, absent the tangible action of discharge, pursue an affirmative defense that it was denied the opportunity to remedy harassment.

Because the trumped-up defenses occurred *after* Petitioner had gone to the EEOC, the punitive damages award is hardly impeached by the existence of those processes. Petitioner's outrage to this day that Respondent preferred the EEOC to those processes certainly explains, however, the retaliatory discharge. Obviously, this Court ought not add a requirement to Title VII's retaliation provision that immunizes employers whose employees choose to seek recourse from the enforcement agency

established by Congress rather than pursue internal processes.

Similarly, this Court ought not confuse economic damages with compensatory and punitive damages. Petitioner recounts Respondent's ability to secure a better-paying position and intimates that his dedication to his career and providing for his family must mean that he suffered only minor discomfort from the retaliatory discharge. Congress provided for separate categories of damages and amended Title VII largely because economic damages did not capture the depth and scope of harm inflicted by discrimination and retaliation.

Petitioner cites *Hennessy v. Penril Datacomm Networks, Inc.*, for the proposition that in the Seventh Circuit, the statutory maximum can only be awarded in the most egregious cases, 69 F.3d 1344, 1355 (7th Cir. 1995), and insists that its behavior was not egregious. However, the Seventh Circuit has also explained that it will not normally disturb an award of damages in a Title VII case at or under the statutory cap, as that decision is "largely within the province of the jury." *Fine v. Ryan International Airlines*, 305 F.3d 746, 755 (7th Cir. 2002). Petitioner has pointed to no case in the Seventh Circuit or elsewhere which proposes that a punitive damage award at or near the statutory cap is excessive where there is evidence to support a finding that an employer engaged in a cover-up in flagrant violation of Title VII. Contrary to Petitioner's assertions, the Court of Appeals' decision in this case neither condones excessive punitive damages, nor conflicts with its earlier precedent.

Underlying Petitioner's arguments are fallacious and preposterous principles that have not been followed by the

lower federal and state courts and, particularly on the facts developed at trial and credited by the jury, should garner no following in this Court. In summary, there is no reason for this Court to grant this Petition and ample reason to let the verdict, judgment, and appellate decision stand.

CONCLUSION

Because Petitioner has not advanced any compelling reason for this Court to review the decision of the United States Court of Appeals, the Petition for Certiorari should be denied.

Dated: January 22, 2004

Respectfully submitted,

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